United Nations A/HRC/37/NGO/103

General Assembly

Distr.: General
8 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Associazione Comunità Papa Giovanni XXIII, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01950(E)
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Maternal Surrogacy: a violation of fundamental human rights

At the 34th regular session of the Human Rights Council, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Ms Maud de Boer-Buquicchio, announced that her next report, to be delivered in the 37th regular session, would have focused on the issue of commercial maternal surrogacy. Unfortunately, such a report was not published before the official deadline for submitting the written statements. However, APG23 would like to express its view on the important topic of maternal surrogacy, even if it cannot comment on the report of the Special Rapporteur.

Heterosexual and homosexual couples, as well as single people, more and more frequently resort to maternal surrogacy to respond to the desire of having a child / of becoming parents, not being able to have children naturally for different reasons. This increasing phenomenon raises ethical and legal issues which not only concern the economic and functional exploitation of women's reproductive system, but also and foremost the defence of the rights of children born through maternal surrogacy.

This parenthood desire sometimes tends to be identified as a claim to turn this desire into a right.

Nonetheless, there isn't a legitimate right to be parents which entails the right to have a child and thus it cannot be recognized as such either as it is at odds with the whole human rights system.
The maternal surrogacy itself completely clashes with the universal ethics of the respect and dignity of all human beings, especially the most vulnerable, and thus it is incompatible with the promotion, protection and fulfilment of human rights.

Besides the unlawful aspects of the maternal surrogacy already mentioned[1] with reference to the violation of the woman dignity, to the exploitation of the surrogate mothers who live in poverty and to the commodification of human beings1, it is important to highlight also some aspects of human rights violation inherent in the theoretical concept of maternal surrogacy:

1) Throughout the last decade, heterosexual and homosexual couples have started to resort to maternal surrogacy in order to satisfy their desire of having children. We are not talking about giving a family to children who for different reasons do not have parents, as it is the case with adoptions. With the maternal surrogacy, we are talking about the creation ad hoc of a child solely with the intention of satisfying the adult's desire for parenthood, with the clear intention of separating the newborn from his/her natural mother.

A serious violence and violation of the system of human rights is hidden inside the overturn of the logic and of the interests at stake. This violence and violation consist in considering the conception, pregnancy and birth of babies as a commodity or a functional service that can be separated from their natural context and biological ties, which are linked to their origins and to their gestation, and birth.

Following the logic of "everything is possible and everything can be bought", some people want to legitimize the creation of a human being only to respond to the desire/claim for parenthood of an intended adult. Thus, the dignity and the rights of the child as well as the relationship with the woman who gave him/her birth are not respected. Moreover, this violation is justified by a manipulative interpretation of the "best interests of the child" principle (art. 3 CRC).

2) Maternal surrogacy contracts envisage that the gestational surrogate mother accepts that an embryo, selected by the intended parents, is implanted inside her womb. The woman compels herself to carry ahead the pregnancy and bear the child eugenically selected in order to deliver him or her to the intended parents right after the birth. In exchange, the

1 See A/HRC/31/NGO/147; A/HRC/34/NGO/154

gestational surrogate mother will receive compensation or she will be given a reimbursement of the expenses met during the pregnancy.

The surrogate mother is thus obliged to follow, during the pregnancy, all the instructions, given by the intended parents, which relates to the health of the child but also to the necessity of doing medical exams to control the health conditions and the development of the child, and in some cases, she can be even obliged by the intended parents to have an abortion.
Therefore, it is clear that "transferring" a healthy and flawless child "by any person or group of persons to another for remuneration or any other consideration" is the real object of the maternal surrogacy contract. This is the exact definition of "sale of children" as set forth in the article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
Moreover, we are clearly facing an evident violation of the fundamental norms protecting the human beings and their dignity. In the logic of the maternal surrogacy, the birth of a baby and the maternity are the object of a contract, introducing the confusion between persons and commodities. If the surrogate gestational mother has to deliver the newborn to other people, she then has to relinquish her maternal rights and her motherhood in favour of the commissioning parents. Therefore, the status and rights of a person become a commodity that is fungible and exchangeable, in clear contrast with the principles set forth in the articles 2, 3 and 4 of the Universal Declaration of Human Rights.

3) The maternal surrogacy is completely modifying the primordial concept of mother, breaking the identity existing between the genetic mother (oocyte donor, often anonymous) and the gestational/biological mother (the woman who is carrying out the pregnancy and bears the baby) and the legal mother (the intended/commissioning parent).
For the first time in the history, the identity of the mother has become uncertain. This is clear especially in the gestational maternal surrogacy, where the woman who accepts to carry ahead the pregnancy (gestational/biological mother) is different from the woman who offers her oocyte (genetic mother). Thus, the baby who is the result of this maternal surrogacy can even have up to three sets of parents: the genetic parents (when there is an oocyte and/or a sperm donor who are normally anonymous); the gestational/biological parent (the woman who carries the pregnancy to term); and the social/legal parents (the commissioning couple or the single adult to whom the baby will be transferred to after the birth).

The surrogate motherhood leads to the separation of the baby from the first two sets of parents, the only ones with which the baby has natural bonds, with a consequent break with her/his genetic and biological origins forcefully preventing him/her from knowing his/her social origins, roots and genetic makeup.

The maternal surrogacy violates the fundamental right of the child to know his or her origins, to preserve his or her identity and to grow up and live with his or her family (art. 8 and 9 CRC).2 Indeed, the surrogate motherhood contract is based on a serious violation imposed on the baby: the forced separation of the baby from the woman who should be his/her natural mother - the woman who carried ahead the pregnancy - and his or her natural family.

Therefore, the maternal surrogacy implies an abandonment of the baby, and this is decided before his or her birth or even before its conception.
In the name of their claimed desire of wanting a child and of taking care of him/her, the commissioning parents decide to deprive the baby of his or her genetic memory, biological bonds, roots and identity. This is also a clear violation of not only the best interests of the child but also of his/her fundamental rights, especially the preservation of his or her identity.

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2 Art. 8 CRC: "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."
Art. 9 CRC: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. (omissis)".

In this regard, it has become extremely urgent to recognize and widen the right of the child to know the genetic makeup, biological origins and bonds, social-historical roots as the broadening of the interpretation of the preservation of the personal identity, as foreseen in the articles 1 and 3 of the Universal Declaration of Human Rights.

For all the above-mentioned considerations and argumentations, APG23 asks the States to take a clear and strong position against the increased use of the maternal surrogacy, which violates not only the dignity of the woman simply seen as a means toward reaching the end of the other person (the commissioning couple), but it also violates the dignity and the fundamental rights of the child born through such a practice.